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SENATE BILL 618

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Richard C. Martinez

AN ACT

RELATING TO COURT FEES; REQUIRING COURTS TO WAIVE FEES WHEN THE INCOME OF A PARTY IS AT OR BELOW ONE HUNDRED FIFTY PERCENT OF FEDERAL POVERTY GUIDELINES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 34-2-5 NMSA 1978 (being Laws 1933, Chapter 81, Section 1, as amended) is amended to read:

"34-2-5. FEES--COLLECTION BY SUPREME COURT CLERK.--

A. The clerk of the supreme court shall collect, ~~[the following fees:~~

~~A.] in all cases docketed in the court, [except those in which statutory exemption exists and those in which the court on showing of poverty may, by order, waive the fee] a docket fee of one hundred twenty-five dollars (\$125), twenty-five dollars (\$25.00) of which shall be deposited in the court~~

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1 automation fund and ninety-six dollars (\$96.00) of which shall
2 be deposited in the court facilities fund. [~~provided that~~] In
3 cases in which a motion to docket and dismiss an appeal is
4 filed for failure to file a statement of the issues, the fee
5 shall be twenty dollars (\$20.00), ten dollars (\$10.00) of which
6 shall be deposited in the court automation fund and ten dollars
7 (\$10.00) of which shall be deposited in the court facilities
8 fund. The court shall, by order, waive the docket fee in cases
9 in which a statutory exemption exists or in which the income of
10 an appellant is at or below one hundred fifty percent of the
11 federal poverty guidelines. The court may, by order, waive the
12 docket fee in special circumstances upon a showing of inability
13 to pay.

14 B. For one copy of files or a record, the clerk of
15 the supreme court shall collect ten cents (\$.10) per folio and
16 for additional copies ordered at the same time five cents
17 (\$.05) per folio;

18 C. For comparing copies of files or records
19 tendered [~~to him~~], the clerk of the supreme court shall collect
20 five cents (\$.05) per folio; and

21 D. For each certificate, the clerk of the supreme
22 court shall collect one dollar (\$1.00)."

23 Section 2. Section 34-6-27 NMSA 1978 (being Laws 1968,
24 Chapter 69, Section 28) is amended to read:

25 "34-6-27. OPERATION--PROCESS.--

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1 A. Process of the district courts in each judicial
2 district shall be under witness of the district judge. Unless
3 otherwise provided by rule of the district court in judicial
4 districts having more than one district judge, process shall be
5 under witness of the presiding judge.

6 B. The district court [~~may~~] shall grant free
7 process to [~~any~~] a party in [~~any~~] a civil or criminal action or
8 special statutory proceeding [~~upon a proper showing of~~
9 ~~indigency~~] as follows:

10 (1) in a civil action or statutory proceeding,
11 the court shall order free process when the income of a
12 petitioner is at or below one hundred fifty percent of the
13 federal poverty guidelines or the court may order free process
14 in special circumstances upon a showing of inability to pay;
15 and

16 (2) in a criminal action, the court shall
17 apply the standard for indigence pursuant to the Public
18 Defender Act. "

19 Section 3. Section 34-7-14 NMSA 1978 (being Laws 1923,
20 Chapter 29, Section 1, as amended) is amended to read:

21 "34-7-14. FEES OF PROBATE COURT CLERKS. --

22 A. Clerks of the probate courts are entitled to
23 receive the following docket fees in all matters:

24 [~~A.~~] (1) for docketing each cause, to be paid
25 by the party docketing the cause, thirty dollars (\$30.00),

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1 which shall include all costs of the clerks in any cause in the
2 court; and

3 ~~[B-]~~ (2) a fee of fifteen cents (\$.15) per
4 folio in addition to the docket fee may be charged for any
5 excess of twenty folios in cases where judgments or decrees or
6 orders exceed twenty folios.

7 B. The provisions of Subsection A of this section
8 shall not apply and no fees shall be collected from a party
9 whose income is at or below one hundred fifty percent of the
10 federal poverty guidelines. A probate judge may waive the fees
11 in special circumstances upon a showing of inability to pay."

12 Section 4. Section 35-6-1 NMSA 1978 (being Laws 1968,
13 Chapter 62, Section 92, as amended) is amended to read:

14 "35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF
15 "CONVICTED".--

16 A. Magistrate judges, including metropolitan court
17 judges, shall assess and collect and, except as provided in
18 Subsection C of this section, shall not waive, defer or suspend
19 the following costs:

- 20 docket fee, criminal actions under Section 29-5-1 NMSA
- 21 1978 \$ 1.00;
- 22 docket fee, to be collected prior to docketing any other
- 23 criminal action, except as provided in Subsection B
- 24 of Section 35-6-3 NMSA 1978 20.00.
- 25 Proceeds from this docket fee shall be transferred

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1 to the administrative office of the courts for
2 deposit in the court facilities fund;
3 docket fee, ten dollars (\$10.00) of which shall be
4 deposited in the court automation fund and fifteen
5 dollars (\$15.00) of which shall be deposited in the
6 civil legal services fund, to be collected prior to
7 docketing any civil action, except as provided in
8 Subsection A of Section 35-6-3 NMSA 1978 . . . 62.00;
9 jury fee, to be collected from the party demanding trial
10 by jury in any civil action at the time the demand
11 is filed or made 25.00;
12 copying fee, for making and certifying copies of any
13 records in the court, for each page copied by
14 photographic process50.
15 Proceeds from this copying fee shall be transferred
16 to the administrative office of the courts for
17 deposit in the court facilities fund; and
18 copying fee, for computer-generated or electronically
19 transferred copies, per page 1.00.
20 Proceeds from this copying fee shall be transferred
21 to the administrative office of the courts for
22 deposit in the court automation fund.

23 Except as otherwise specifically provided by law, docket
24 fees shall be paid into the court facilities fund.

25 B. Except as otherwise provided by law, no other

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1 costs or fees shall be charged or collected in the magistrate
2 or metropolitan court.

3 C. The magistrate or metropolitan court [~~may grant~~]
4 shall, upon motion, order free process [to any] when the income
5 of a party in [any] a civil proceeding or special statutory
6 proceeding [upon a proper showing of indigency] is at or below
7 one hundred fifty percent of the federal poverty guidelines.
8 The court may order free process in special circumstances upon
9 a showing of inability to pay. The magistrate or metropolitan
10 court may deny free process if it finds that the complaint on
11 its face does not state a cause of action.

12 D. As used in this subsection, "convicted" means the
13 defendant has been found guilty of a criminal charge by the
14 magistrate or metropolitan judge, either after trial, a plea of
15 guilty or a plea of nolo contendere. Magistrate judges,
16 including metropolitan court judges, shall assess and collect
17 and shall not waive, defer or suspend the following costs:

18 (1) corrections fee, to be collected upon
19 conviction from persons convicted of violating any provision of
20 the Motor Vehicle Code involving the operation of a motor
21 vehicle, convicted of a crime constituting a misdemeanor or a
22 petty misdemeanor or convicted of violating any ordinance that
23 may be enforced by the imposition of a term of imprisonment as
24 follows:

25 in a county with a metropolitan court \$10.00;

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1 in a county without a metropolitan court 20.00;

2 (2) court automation fee, to be collected upon
3 conviction from persons convicted of violating any provision of
4 the Motor Vehicle Code involving the operation of a motor
5 vehicle, convicted of a crime constituting a misdemeanor or a
6 petty misdemeanor or convicted of violating any ordinance that
7 may be enforced by the imposition of a term of
8 imprisonment 10.00;

9 (3) traffic safety fee, to be collected upon
10 conviction from persons convicted of violating any provision of
11 the Motor Vehicle Code involving the operation of a motor
12 vehicle 3.00;

13 (4) judicial education fee, to be collected upon
14 conviction from persons convicted of operating a motor vehicle
15 in violation of the Motor Vehicle Code, convicted of a crime
16 constituting a misdemeanor or a petty misdemeanor or convicted
17 of violating any ordinance punishable by a term of
18 imprisonment 2.00;

19 (5) brain injury services fee, to be collected
20 upon conviction from persons convicted of violating any
21 provision of the Motor Vehicle Code involving the operation of
22 a motor vehicle 5.00;
23 and

24 (6) court facilities fee, to be collected upon
25 conviction from persons convicted of violating any provision of

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1 the Motor Vehicle Code involving the operation of a motor
2 vehicle, convicted of a crime constituting a misdemeanor or a
3 petty misdemeanor or convicted of violating any ordinance that
4 may be enforced by the imposition of a term of imprisonment as
5 follows:

- 6 in a county with a metropolitan court 24.00;
- 7 in any other county 10.00.

8 E. Metropolitan court judges shall assess and collect
9 and shall not waive, defer or suspend as costs a mediation fee
10 not to exceed five dollars (\$5.00) for the docketing of small
11 claims and criminal actions specified by metropolitan court
12 rule. Proceeds of the mediation fee shall be deposited into
13 the metropolitan court mediation fund. "

14 Section 5. Section 39-3-12 NMSA 1978 (being Laws 1977,
15 Chapter 163, Section 1) is amended to read:

16 "39-3-12. INDIGENT APPEALS--FREE PROCESS.--In [any] an
17 appeal, the court [~~may~~] shall grant free process, including the
18 cost of any necessary transcripts of record, to [any] an
19 appellant, upon [~~a proper showing of indigency, unless the~~
20 ~~trial court certifies in writing that the appeal is not taken~~
21 ~~in good faith~~] motion, when the income of the appellant is at
22 or below one hundred fifty percent of the federal poverty
23 guidelines. The court may order free process in special
24 circumstances upon a showing of inability to pay. Necessary
25 costs, including costs of transcripts, shall be paid by the

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1 administrative office of the courts. [~~Any~~] Costs awarded to an
2 indigent appellant shall be taxed in favor of the state. The
3 provisions of this section do not apply if a trial court
4 certifies in writing that the appeal is not taken in good
5 faith. "